

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 94-12446
Chapter 7

RICKY WAYNE CARR,

Debtor

GANDY WYATT,

Plaintiff

v.

Adversary Proceeding
No. 94-1208

RICKY WAYNE CARR,

Defendant

MEMORANDUM

This adversary proceeding is before the court upon the Motion to Dismiss filed on behalf of the Defendant, Ricky Wayne Carr ("Defendant"). The Plaintiff, Gandy Wyatt ("Plaintiff"), although represented by counsel, has not responded to the motion as required by LOCAL BANKR. R. 9(c). For the reasons hereinafter stated, the complaint will be dismissed.

This is a core proceeding. 28 U.S.C. §157(b)(2)(I).

I.

The Defendant filed his chapter 7 case on July 7, 1994. The meeting of creditors pursuant to 11 U.S.C. §341 was scheduled for August 5, 1994. The Plaintiff was listed as a creditor and was sent proper notice. Absent an extension, October 4, 1994, was the last date a complaint to determine the dischargeability of any debt pursuant to §523(c) of the Bankruptcy Code could be timely filed. Bankruptcy Rule 4007(c). No extensions were requested.

On August 10, 1994, Plaintiff filed an "Objection to Discharge" citing §523(6)¹ of the Bankruptcy Code.

By order filed August 29, 1994, the "Objection to Discharge" was restyled to reflect that it was an adversary proceeding and that it should be opened as such. The Plaintiff was reminded of the filing fee that had not been paid.

On November 21, 1994, the Defendant filed a Motion to Dismiss reciting that service had not been made even though a summons was issued at the time of the August 29 order and further reciting that the filing fee had not been paid. A hearing was conducted on Defendant's Motion to Dismiss on December 22, 1994. The filing fee still had not been paid, and the adversary proceeding was dismissed by order filed December 22, 1994.

¹Presumably, plaintiff intended this to be 11 U.S.C. §523(a)(6).

The present adversary proceeding was commenced on the same date, December 22, again alleging that discharge is not allowed under §523(6)² because it is "a debt arising from the Defendant's deliberate misconduct." Specific acts of misconduct are not alleged.

II.

A proceeding to determine the dischargeability of a debt is an adversary proceeding. Bankruptcy Rule 7001(6). The time fixed for filing a complaint to determine dischargeability of a debt is governed by Bankruptcy Rule 4007(c). In this case, a complaint to determine dischargeability of a debt was timely only if filed on or before October 4, 1994. The first adversary proceeding was timely; however, it was dismissed. This second adversary proceeding, filed December 22, 1994, is filed outside the time allowed by Bankruptcy Rule 4007(c). There is no saving statute similar to TENN. CODE ANN. §28-1-105. See, *Davis v. Lewis*, 36 B.R. 88 (E.D. Ark. 1984).

Furthermore, the complaint could have been dismissed for Plaintiff's failure to respond to the motion which is "construed by the court to mean that the [plaintiff] does not oppose the relief requested by the motion."

III.

Accordingly, the Motion to Dismiss filed on behalf of the Defendant should be sustained. The objection to discharge will be denied and this adversary proceeding will be dismissed.

²See footnote 1.

This Memorandum constitutes findings of fact and conclusions of law as required by FED. R. BANKR. P. 7052. An appropriate order shall be entered.

At Chattanooga, Tennessee.

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in a Memorandum Opinion filed contemporaneously
herewith,

It is ORDERED that the Motion to Dismiss filed on behalf of the Defendant is
sustained and this adversary proceeding is dismissed.

ENTER:

BY THE COURT

entered 3/14/1995

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE